

ORDINANCE NO. 1895

AN ORDINANCE OF THE CITY OF SUGAR LAND, TEXAS, AMENDING CHAPTERS THREE AND FOUR OF THE CODE OF ORDINANCES REGARDING SOLID WASTE AND COMMERCIAL RECYCLING REGULATIONS.

WHEREAS, the City wishes to transition from the current non-exclusive system of commercial solid waste collection to a uniform waste collection service provided by an exclusive franchisee; and

WHEREAS, the City is vested with full authority under its police power to regulate the collection and disposal of solid waste and the use of its public streets for the same; and

WHEREAS, the Texas Health and Safety Code expressly authorizes the City to grant an exclusive franchise to a single waste hauler to collect and dispose of solid waste; and

WHEREAS, the City finds that the current system has resulted in insufficient waste hauler accountability, inconsistent pricing, non-uniform appearance and quality of vehicles and containers, haulers operating without licenses or in violation of City requirements, unnecessary traffic congestion, and unnecessary wear and tear on City streets; and

WHEREAS, the City believes an exclusive franchise will provide substantial benefits to the residents of Sugar Land, including decreased cost of service, enhanced customer service, increased recycling, decreased impact on City streets, increased accountability, and improvements in the quality and appearance of containers, vehicles, and the community generally; and

WHEREAS, the City intends to mitigate the impact of the transition to the exclusive franchise by allowing commercial residents currently receiving collection and disposal services from a hauler other than the City's exclusive franchisee to "opt out" of the exclusive franchisee's services for a limited period of time, consistent with Section 364.034(e) of the Texas Health and Safety Code; and

WHEREAS, the City has determined that a customer's ability to opt-out of the exclusive franchise should end at the expiration of its existing contract with a third-party hauler, or at the expiration of the hauler's operating license with the City, whichever occurs sooner; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SUGAR LAND, TEXAS:

Section 1. That the City Council finds as true and correct and adopts the findings and recitals set forth in the preamble to this Ordinance.

Section 2. That Section 3-148 of the Code of Ordinances is amended by adding the following definitions in alphabetical order within the section:

Sec. 3-148. Definitions.

In this article:

Commercial solid waste customer means the owner or lessee of commercial property or of residential property with respect to the collection of construction and demolition waste.

Construction and demolition waste means waste resulting from construction or demolition projects, which includes all materials that are directly or indirectly the by-products of construction work or that result from demolition of buildings and other structures. Such materials may include paper, cartons, gypsum board, wood, excelsior, rubber, and plastic.

Container means a receptacle designed to contain solid waste.

Eligible commercial waste customer means any person receiving commercial solid waste or construction and demolition waste collection and disposal services from a city-licensed commercial solid waste operator under an existing contract or agreement in effect on October 1, 2013.

Exclusive franchisee means the commercial solid waste operator holding an exclusive franchise from the city to collect and dispose of commercial solid waste.

Household hazardous waste means hazardous waste generated by or from a residential property. The city maintains a list of household hazardous waste items designated to be collected from a residential property.

Industrial waste means solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operations.

Recycling means a process by which materials that have served their intended use or are scrapped, discarded, used, surplus, or obsolete are collected, separated, or processed and returned to use in the form of raw materials in the production of new products. Except for mixed municipal solid waste composting, that is, composting of the typical mixed solid waste stream generated by residential, commercial, and/or institutional sources, recycling includes the composting process if the compost material is put to beneficial use.

Recyclable material means a material that has been recovered or diverted from the nonhazardous waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products that may otherwise be produced using raw or virgin materials. Although recyclable material is not solid waste, it may become solid waste if it is abandoned or disposed of rather than recycled, whereupon it will be solid waste with respect to the party actually abandoning or disposing of the material.

Temporary construction and demolition waste means construction and demolition waste from a project that does not exceed 30 days.

Section 3. That the definition of "Recycled solid waste" in Section 3-148 of the Code of Ordinances is deleted.

Section 4. That the definitions of "Commercial solid waste" and "Solid waste" in Section 3-148 of the Code of Ordinances are amended to read as follows:

Sec. 3-148. Definitions. In this article:

Bulky waste means appliances, furniture, household equipment, up to five cubic yards of construction and demolition waste from do-it-yourself home projects, and other items too large for the cart.

Commercial solid waste means any solid waste generated from any improved real property other than improved real property used for single or two-family dwellings. Commercial solid waste includes industrial waste and construction and demolition waste.

Solid waste means all garbage, rubbish, refuse or other solid waste materials normally generated from commercial or residential properties other than recyclable material, hazardous waste generated by commercial solid waste customers, domestic septage, grease trap waste, grit trap waste, lint trap waste, or sand trap waste. For residential properties, solid waste may include household waste, garbage, dead animals, bulky waste, green waste, recyclable material, and household hazardous waste."

Section 5. That Chapter 3, Article IX., Division 1. is amended by adding Section 3-150 to read as follows:

Sec. 3-150. Offenses.

- (a) It is unlawful for any person to operate or use a motor vehicle to unload or empty a solid waste container by means of a mechanical lifting apparatus or device attached to the motor vehicle between the hours of 10:00 p.m. and 7:00 a.m. of the following day, if the container is located within 400 feet of a residential property.
- (b) All solid waste must be transported in leak proof containers or in leak proof vehicle bodies or compartments and be so fitted and constructed so that the solid waste is kept covered at all times except when being loaded and emptied."

Secs. 3-151-3-154. Reserved.

Section 6. That Section 3-155(a) of the Code of Ordinances is amended to read as follows:

Sec. 3-155. Solid waste containers.

- (a) Each residential property must use a cart provided by the city for the collection and removal of solid waste and must use a cart provided by the city for the collection and removal of recyclable material. The city will provide the carts to each residential property. Carts remain the property of the city and may not be removed from the residential property served except by the city.”

Section 7. That Section 3-156 of the Code of Ordinances is amended to read as follows:

Sec. 3-156. Requirements for collection.

- (a) *Customers.*

- (1) Except for bulky and green waste, customers must place all solid waste within a cart provided by the city for collection.
- (2) Customers should contain all solid waste placed in carts used for garbage in plastic or paper bags to help prevent odors and the contents from blowing out of the container when the cart is being emptied.
- (3) Customers may not place hot ashes, car parts, or non-household hazardous waste in a cart or at the curb for collection.
- (4) Customers may not place construction and demolition waste from a contractor project in a cart or at the curb for collection.
- (5) Customers must place the carts for solid waste collection at the base of the curb (where curbs exist) with the cart wheels against the curb.
- (6) Customers must place carts in a manner that does not block sidewalks, that is not within five feet of a mailbox, parked car, or other fixed object, and that is clear of low hanging limbs and utility lines.
- (7) Customers may not place solid waste in a cart that exceeds the maximum weight rating capacity imprinted on the container.
- (8) Customers may not place carts out by the curb for collection earlier than 6:00 p.m. the evening before the day of collection and later than 7:00 a.m. of the day of collection. Customers must remove carts from the curb no later than 8:00 a.m. on the morning following the day of collection.

(9) Customers may place tree limbs out for collection if the tree limbs are:

- a. No longer than four feet in length with a diameter of four inches or less; or
- b. No longer than two feet in length with a diameter between four and six inches.

(10) Customers may place up to 10 cubic yards of green waste to be collected on the scheduled collection day.

(11) Customers may place green waste that exceeds 10 cubic yards to be collected within 5 business days of the customer's scheduled collection day.

(12) Customers may place for collection appliances designed to use refrigerants if:

- a. All doors of a refrigerator or freezer are removed; and
- b. A tag is prominently displayed on the appliance issued by a person licensed to perform air conditioning and refrigeration work under Chapter 1302, Texas Occupations Code, as amended, certifying that all refrigerants have been removed.

(13) Customers may not place bulky waste for collection if the total volume of bulky waste exceeds five cubic yards for any one collection day.

(14) Customers must place all bulky waste and green waste no farther than four feet from the curb for collection; and

- (b) *City.* The city is not required to collect any residential solid waste that does not comply with the requirements of this section."

Section 8. That the title of DIVISION 3. VEGETATION in Chapter 3, Article IX of the Code of Ordinances is amended to read as follows:

DIVISION 5. VEGETATION

Section 9. That the title of Article IX. in Chapter 3 of the Code of Ordinances is amended to read as follows:

ARTICLE IX. SOLID WASTE, RECYCLABLE MATERIALS AND VEGETATION

Section 10. That Chapter 3, Article IX. of the Code of Ordinances is amended by adding a new DIVISION 3. COMMERCIAL SOLID WASTE to read as follows:

DIVISION 3. COMMERCIAL SOLID WASTE

Sec.3-159. Commercial solid waste requirements.

- (a) *Commercial property.* For each commercial property:
- (1) All commercial solid waste must be placed within the container provided by the exclusive franchisee;
 - (2) All commercial solid waste must be contained within the container to help prevent odors and the contents from escaping from the container;
 - (3) The area around the container must be kept clear of obstructions so that the exclusive franchisee may service the container;
 - (4) Containers may not be modified or used for any purpose other than for disposal and collection of commercial solid waste; and
 - (5) Containers must be located in a safe, accessible location that allows for adequate clearance for collection.
- (b) *Compliance.* The exclusive franchisee is not required to collect commercial solid waste that does not comply with the requirements of this section.

Sec. 3-160. Opt-out exception for eligible commercial solid waste customer.

- (a) Any eligible commercial waste customer may "opt out" of the city's exclusive franchise with the exclusive franchisee as provided in this section.
- (b) The eligible commercial waste customer must provide notice of its desire to opt out by July 1, 2013 by submitting to the city's public works department:
- (1) A letter stating the desire to opt out of the exclusive franchise;
 - (2) A written certification from the eligible commercial waste customer stating that the eligible commercial waste customer is currently receiving commercial solid waste services from a commercial solid waste operator under an existing contract or agreement; and
 - (3) Either:
 - a. A copy of the written contract with the commercial solid waste operator; or,
 - b. If there is no written contract, satisfactory documentation showing the existence of an agreement with the commercial solid waste operator to provide commercial solid waste collection service.

(c) If the eligible commercial waste customer elects to opt out of the city's exclusive franchise under this section, the "opt-out" period begins on October 1, 2013 and ends on the earlier of the expiration of the:

(1) Eligible commercial waste customer's term of its contract or agreement with the commercial solid waste operator; or

(2) Commercial solid waste operator's valid operating license issued by the city pursuant to chapter 4, article V of this code.

(d) The eligible commercial waste customer may notify the city in writing at any time during the opt-out period that it desires to use the services of the exclusive franchisee.

Sec. 3-161. Fees and billing. Each commercial solid waste customer must pay a monthly fee for commercial solid waste collection services as established by the city council in this code. The fee will be billed monthly and is payable on the due date shown on the bill.

Section 11. That Chapter 3, Article IX. of the Code of Ordinances is amended by adding a new DIVISION 4. COMMERCIAL RECYCLABLE MATERIALS to read as follows:

DIVISION 4. COMMERCIAL RECYCLABLE MATERIALS

Sec. 3-162. Regulations.

Recyclable material from commercial property must:

(a) Be separated by the commercial solid waste customer from any solid waste generated at the commercial property;

(b) Not be commingled with any commercial solid waste during storage and/or collection;

(c) Be stored in carts, containers and/or roll-offs specifically designated to store recyclable material, or bulked and secured in a manner not contributing to a nuisance, windblown litter, discharge to the environment, or potential fire hazard; and

(d) Be stored in carts, containers, roll-offs or as bulked material with affixed labels, decals, paint or signs that clearly indicate "RECYCLABLE MATERIAL" in letters at least two inches in height, in a color boldly contrasting the paint color of the cart, container, roll-off or bulked material.

Section 12. That Chapter 4, Article V. of the Code of Ordinances is amended to read as follows:

ARTICLE V. COMMERCIAL SOLID WASTE AND RECYCABLE MATERIALS OPERATORS

DIVISION 1. GENERAL PROVISIONS

Sec. 4-66. Definitions. The definitions of section 3-148 of this code apply to this article.

Sec.4-67. License required.

- (a) Commercial solid waste operators collecting, transporting, or disposing of commercial solid waste or temporary construction and demolition waste within the city's corporate limits for compensation must obtain a license from the city under this article.
- (b) Recyclable materials operators collecting, transporting, or disposing of recyclable material from commercial property within the city's corporate limits for compensation must obtain a license from the city under this article.

Sec. 4-68. License application requirements. To obtain a license under this article, the application must be made on forms provided by the city for that purpose along with any application fee. The application requires that the applicant:

- (a) State the name under which the operator conducts business, the business address, and the telephone number;
- (b) State the make, model, and body style of each motor vehicle to be used in the city;
- (c) Submit proof of liability insurance for the motor vehicles in the amounts required by law;
- (d) Agree to abide by and be bound by the provisions of this article and to comply with all other federal and state laws applicable to the licensee's activities; and
- (e) Submit any other information reasonably required by the city to administer this article.

Sec. 4-69. License regulations.

- (a) All licensees must prominently place clearly legible letters not less than five inches in height on both sides of the vehicles and equipment that the licensee operates within the city that identify the assigned number of each vehicle and the name and telephone number of the licensee.
- (b) All licensees providing collection services for recyclable materials must display recycling signage on all vehicles and equipment in legible letters not less than five inches in height.
- (c) All licensees' vehicles and equipment must be well-maintained, in good repair, clean, sanitary, and free from leaks and excessive emissions.
- (d) All licensees must contain, enclose or tie all commercial solid waste and recyclable materials in a manner that prevents spilling, leaking or blowing.

- (e) All licensees must immediately clean up all leakage, spillage and blown debris resulting from the licensees' vehicles or equipment.
- (f) All licensees must operate all vehicles and equipment in compliance with the laws and manufacturers' specifications.
- (g) All licensees must notify the city of any change in the information submitted in an application for a license, including a change in the name, address or telephone number of the licensee.
- (h) All licensees must maintain their licenses issued under this article in compliance with the city's ordinances.
- (i) The city manager or his designee may examine the books, papers, records, financial reports, equipment, and other facilities of a licensee to verify compliance with this article.
- (j) The city manager or his designee may revoke a license for a violation of this article under the Uniform Permit Procedures in Chapter 4, Article I, of this code.

DIVISION 2. COMMERCIAL SOLID WASTE OPERATORS

Sec. 4-70. Regulations.

- (a) Each commercial solid waste operator must keep for two consecutive calendar years all scale house tickets, receipts, invoices, manifests, and other documents evidencing the collection within the city of commercial solid waste and the facility where the commercial solid waste was delivered.
- (b) Each commercial solid waste operator must submit to the city within 30 days following each September 30, December 31, March 31, and June 30, quarterly reports:
 - (1) Detailed by month showing the total commercial solid waste tonnage collected by the commercial solid waste operator during each month of the previous quarter;
 - (2) That include the list of names and addresses of the disposal location(s) of the commercial solid waste collected within the city during the previous quarter;
 - (3) That include the total amount of commercial solid waste delivered at each disposal location each month of the previous quarter;
 - (4) That show the gross revenues earned each month within the city during the previous quarter;

- (5) That include, in table format, the customer's name, address, number of containers serviced, container type, size, and service schedule or on-call service; and
- (6) That includes any additional reports reasonably requested by the city for the time period requested.

Sec. 4-71. Solid waste license fee.

- (a) Each commercial solid waste operator that has been granted a license under this article must pay a license fee equal to five percent of the operator's gross revenues from the collection, hauling, or transporting of commercial and industrial solid waste collected within the city, after excluding therefrom the revenues licensee received from the collection, hauling, or transporting of recyclable material collected within the city.
- (b) Each commercial solid waste operator must pay the required license fee quarterly to the city within 30 days following each September 30, December 31, March 31, and June 30. Each quarterly payment must be computed on the revenues for the quarter preceding the quarter in which the payment is due. Each commercial solid waste operator must provide with each quarterly payment a statement of the gross revenues upon which the payment is computed, prepared according to generally accepted accounting practices, and signed by an authorized representative of the licensee. The commercial solid waste operator must pay a late penalty of 12 percent per annum, compounded daily, on any quarterly payment, or portions thereof, that is paid subsequent to the required payment date.
- (c) Each quarterly payment must also be accompanied by a listing of the location and number of commercial containers serviced by the commercial solid waste operator in the city.
- (d) The city may inspect and audit the commercial solid waste operator's records upon which payments to the city are computed and paid. If the city's inspection or audit shows that the commercial solid waste operator has underpaid an amount required to be paid under this article, the commercial solid waste operator must pay the deficiency within 60 days of the date the city gives the commercial solid waste operator written notice of the deficiency. If the deficiency is more than ten percent of the amount the commercial solid waste operator was required to pay for the quarter, the commercial solid waste operator must also pay a penalty of ten percent per annum on the deficiency and the city's reasonable cost incurred for the inspection or audit.
- (e) The city's acceptance of a payment is not deemed to be a release or an accord as satisfaction of any claim the city may have for further or additional sums payable under this article. The city is not liable to refund to the commercial solid waste operator any payment the commercial solid waste operator makes to the city that is more than the amount required to be paid by commercial solid waste operator under this article.

Sec. 4-72. Offense.

- (a) It is unlawful for any person, other than the city, to operate or cause any other person to operate, a motor vehicle upon a public street in the city for the purpose of collecting, transporting, or disposing of commercial solid waste within the city's corporate limits for compensation unless the person that owns or controls the motor vehicle:
- (1) From April 3, 2013 to October 1, 2013, has a valid license issued by the city under this article.
 - (2) From and after October 1, 2013:
 - a. Has an exclusive franchise with the city;
 - b. Has a valid license issued by the city under this article and is providing collection and disposal services for:
 1. An eligible commercial solid waste customer that has opted out of the city's exclusive franchise under section 3-160 of this code; or
 2. Temporary construction and demolition waste; or
 - c. Is providing commercial solid waste collection services in an area annexed by the city under a contract in effect at the time of annexation, as applicable under Section 43.056(n), Tex. Local Gov't Code.
- (b) A commercial solid waste operator's license issued by the city on or after April 2, 2013 pursuant to this article is valid until December 31, 2013.

DIVISION 3. RECYCLABLE MATERIALS OPERATORS

Sec. 4-73. License regulations.

- (a) Each recyclable materials operator must keep for two consecutive calendar years:
- (1) Customer records, including customer name, address, service level information, and routing records consisting of the licensed vehicle numbers, collection day and daily routes; and
 - (2) Scale house tickets, receipts, invoices, manifests, and other documents evidencing the collection of recyclable materials within the city and the recycling facility where the recyclable materials were delivered; and other pertinent papers in such form as the city may require.
- (b) The recyclable materials operators must submit to the city:
- (1) Within 30 days following each September 30, December 31, March 31, and June 30, quarterly reports:

- a. Detailed by month showing the total tonnage of recyclable materials and each material type collected by tonnage by the recyclable materials operator during each month of the previous quarter;
- b. That include the list of names and addresses of the disposal location(s) of the recyclable materials collected within the city during the previous quarter;
- c. That includes the total amount of recyclable materials delivered at each disposal location each month of the previous quarter listed separately by material type ;
- d. That shows the gross revenues earned each month within the city during the previous quarter; and
- e. That includes, in table format, the customer's name, address, number of containers serviced, container type, size, and service schedule or on-call service.

(2) Any additional reports reasonably requested by the city for the time period requested.

Sec. 4-74. Offense. It is unlawful for any person, other than the city, to operate or cause any other person to operate, a motor vehicle upon a public street in the city for the purpose of collecting, transporting, or disposing of recyclable material from commercial property within the city's corporate limits for compensation unless the person that owns or controls the motor vehicle has a valid license issued by the city under this article.

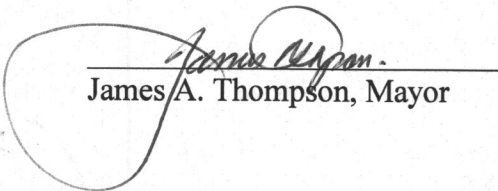
Sec. 4-75. Reserved.

Section 13. That any person found guilty of violating this ordinance will be fined not more than \$2,000.00 for each offense. Notice of the enactment of this ordinance will be given by publishing the ordinance or its descriptive caption and penalty in the City's official newspaper one time within thirty days of passage.

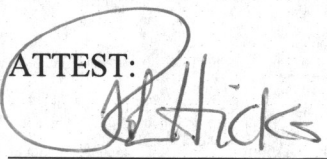
Section 14. That the provisions of this ordinance are severable and the invalidity of any part of this ordinance will not affect the validity of the remainder of the ordinance.

APPROVED on first consideration on March 05, 2013.

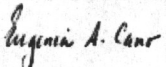
ADOPTED on second consideration on March 19, 2013.


James A. Thompson, Mayor

ATTEST:


Robin Hicks, Acting City Secretary

Reviewed for Legal Compliance:


Eugenia A. Cano



CITY COUNCIL

AGENDA REQUEST

| | | | |
|---|--|--------------------------|--|
| AGENDA OF: | 03-19-13 | AGENDA REQUEST NO: | III-A |
| INITIATED BY: | DAWN STEPH, <i>DMS</i> ENVIRONMENTAL MANAGER | RESPONSIBLE DEPARTMENT: | PUBLIC WORKS |
| PRESENTED BY: | DAWN STEPH, ENVIRONMENTAL MANAGER | DIRECTOR: | MIKE GOODRUM, <i>MUG</i> DIRECTOR OF PUBLIC WORKS |
| | | ADDITIONAL DIRECTOR (S): | N/A |
| SUBJECT / PROCEEDING: | COMMERCIAL SOLID WASTE ORDINANCE REVISIONS SECOND READING OF ORDINANCE NO. 1895 | | |
| EXHIBITS: | ORDINANCE NO. 1895 | | |
| CLEARANCES | | APPROVAL | |
| LEGAL: | EUGENIA A. CANO, FIRST ASST. CITY ATTORNEY <i>EAC</i> | ASSISTANT CITY MANAGER: | KAREN DALY <i>Kg</i> |
| PURCHASING: | N/A | ASSISTANT CITY MANAGER: | N/A |
| BUDGET: | N/A | CITY MANAGER: | ALLEN BOGARD <i>Allen Bogard</i> |
| BUDGET | | | |
| EXPENDITURE REQUIRED: \$ | | N/A | |
| CURRENT BUDGET: \$ | | N/A | |
| ADDITIONAL FUNDING: \$ | | N/A | |
| RECOMMENDED ACTION | | | |
| Consider and approve Ordinance No. 1895 to establish the framework for an exclusive commercial solid waste franchise. | | | |

EXECUTIVE SUMMARY

The Public Works Department is presenting revisions to the City Code in order to implement an exclusive franchise solid waste system for the collection and disposal of solid waste from commercial properties and construction debris from commercial and residential properties.

The current commercial solid waste system is an open system but the City requires solid waste haulers to obtain a license. In order to obtain a license, the hauler must submit an application and pay a license application fee of \$100. Once approved, the license is valid for a two year period. During the term of the license, haulers must pay a franchise fee quarterly to the City equal to four percent of the hauler's gross revenues from collection of commercial solid waste and construction debris from residential properties excluding revenues from the collection of recyclable materials. Licensed haulers are required to submit a listing of the location and number of commercial containers serviced in the City with each franchise fee payment. Currently, the City has 35 licensed solid waste haulers.

As covered in a workshop with City Council on November 6, 2012, a common best practice among cities is an exclusive solid waste collection system. Under an exclusive solid waste system, the City would enter into a long-term contract, or exclusive franchise, with a private hauler for the collection and disposal of solid waste from commercial properties and construction debris from residential properties. Section 364.034 of the State of Texas Health & Safety Code authorizes a local government to grant a franchise for solid waste collection and disposal. An exclusive franchise has many benefits which include decreased cost of service, increased level of service, increased recycling, decreased impact on streets, reduction in the number of collection vehicles, increased safety, decreased vector control issues, decreased storm water issues, and increased accountability. Additional benefits which can be included in the contract include requirements for recycling, maximum age of collection vehicles, appearance and condition of containers and vehicles, and management of customer complaints.

At the November 6 workshop, the City Council directed staff to move forward with developing an exclusive franchise solid waste system negotiating an exclusive franchise with Republic Services (BFI Waste Services of Texas, L.P), the City's current residential solid waste contractor.

An additional workshop was held with City Council on February 19, 2013 to review the results of the negotiations and to outline revisions needed to the City Code. The purpose of the ordinance revision is to establish the regulatory framework for the exclusive franchise for the collection and disposal of commercial solid waste, provide guidelines for commercial solid waste customers, amend the requirements for commercial solid waste and recyclable material operators, outline the transition to an exclusive system, and remove sections of the City Code no longer relevant. Ordinance No. 1895 addresses these issues.

The Public Works Department recommends approval of Ordinance 1895 amending Chapters 3 and 4 regarding solid waste and recycling regulations.

EXHIBITS

Ordinance No. 1895